

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared By



Endorsed By



AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between Webb County, a political subdivision for the State of Texas, acting through its Commissioners Court, 1000 Houston Street, Laredo, Texas 78040 (“Owner”) and **[name of contracting entity]** (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Webb County Rio Bravo, Texas Street Improvements (Overlay and Stripping)

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Overlay and Stripping of the following streets in Rio Bravo, Texas: Centeno Lane (1.62 miles); Pena Drive (.28 miles); Villa Drive (.08 miles); Crisantena Drive (.07 miles); Tulipian Drive (.25 miles); Martha Drive (.24 miles); Orquidia Lane (.66 miles); and Margarita Lane (.41 miles).**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained Webb County’s Engineering Department (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by Engineer

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and Final completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 INTENTIONALLY DELETED
- 4.03 *Contract Times: Days*
- A. The Work will be substantially complete within the following number of days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within the following number of days after the date when the Contract Times commence to run.

Substantial Completion	Final Completion
(Insert number) Calendar Days	(Insert number) Calendar Days

4.04 INTENTIONALLY DELETED

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner Eight Hundred Fifty Dollars (\$850.00) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for final completion and readiness for final payment, Contractor shall pay Owner Eight Hundred Fifty-Dollars (\$850.00) for each day that expires after such time until the Work is completed and ready for final payment.
3. INTENTIONALLY DELETED
4. Liquidated damages for failing to timely attain Substantial Completion, and Final completion are not additive, and will not be imposed concurrently. However, if the achieved substantial completion date falls after the specified final completion date, liquidated damages as specified in Completion of Remaining Work will immediately begin accruing from the date of substantial completion until final completion is achieved.

B. INTENTIONALLY DELETED

C. **Deleted**

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for

Work to be finally completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is finally completed and ready for final payment.

- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of \$[number].

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. INTENTIONALLY DELETED

- C. INTENTIONALLY DELETED

- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 15TH day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. The Owner holds the right to withhold any payment in accordance with Paragraph 15.01 of the General Conditions. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. 95 percent of Work completed (with the balance being retainage); and

1) Deleted

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

Notes to Users—Typical values used in Paragraph 6.02.B are 100 percent and 200 percent respectively, subject to Laws and Regulations specific to the Project.

- B. Upon Substantial Completion **of the entire construction to be provided under the construction Contract Documents**, Owner shall pay an amount sufficient to increase total payments to Contractor to **ninety-five percent (95%)** of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **one hundred twenty five (125%) percent** of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions, plus and retainage minus any damages as described in Paragraphs 4.05 and 4.06 above.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. Payments are due and payable within thirty (30) days of the Contractor's invoice and approval by Engineer. All amounts not paid when due will bear interest at the rate in accordance with Texas Government Code section 2251.024.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Executed Agreement ("Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)", as amended, EJCD C-520 (2018 Edition).
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - c. Bid Bond (together with power of attorney)
 - 3. General Conditions ("Standard General Conditions of the Construction Contract"), EDJC C-700 (2018 Edition).
 - 4. Supplementary Conditions: ("Supplementary Conditions of the Construction Contract), amended, EDJC C-800 (2018 Edition).
 - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).

6. Drawings (not attached but incorporated by reference) consisting of Twenty-One sheets developed by the Webb County Engineering Department dated August 22, 2024, with each sheet bearing the following general title: "Construction Plans for Rio Bravo Overlay and Stripping"
7. Intentionally Deleted
8. INTENTIONALLY DELETED.
9. Exhibits to this Agreement (enumerated as follows):
 - a. **[To Be Determined]**
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above) and are made part of this Contract for all intents and purposes.
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.
- E. The Contract Documents represents the entire integrated agreement ("Contract") between Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Contract shall be valid, binding, and enforceable only if said revision, amendment, or modification is made conspicuous by being underlined, lined-through, or highlighted in this Contract signed by Contractor and the authorized representative of Owner's Commissioners Court. In the event of a conflict, terms and conditions contained in the Contract, shall take precedence over terms and conditions contained in the Supplementary Conditions, and the terms and conditions in Supplementary Conditions, shall take precedence over the terms and conditions in the General Conditions. If the Request for Proposal ("Bid Proposal") and the Proposal ("Bid") shall take precedence over the Proposal ("Bid"), unless specifically agreed otherwise herein.
- F. The Webb County Commissioners Court, by majority vote, is the only representative of the Owner, a political subdivision of the State of Texas, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum, or to agree to an extension to the date of Substantial or Final Completion or terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the

Webb County Commissioners Court, following appropriate Commissioners Court action: Hon. Tano E. Tijerina, Webb County Judge, or other Commissioners Court designee.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied all the (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. The Contractor hereby represents and warrants to for the benefit of the Owner that:
 1. The Contractor has reviewed and understand the prevailing wage rate requirements and will provide further verified information, certification or assurance of compliance as may be required by the Owner.
 2. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part , from the Federal or State (Texas) Government or any damages owed to the Federal or State Government by the Owner). While the Contractor has no direct contractual privity with the Federal or State Government, as a lender to the Owner for the funding of this project, the Owner and Contractor agree that the Federal of State Government is a third-party beneficiary and neither this paragraph (nor any other provision of this Contract necessary to this paragraph force or effect) shall be amended or waived without the prior written consent of the Federal or State Government.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published

by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

Article 9 Miscellaneous Provisions

- A. Execution of this Contract shall constitute Contractor’s approval and acceptance of all terms, covenants and conditions as modified and contained in the Contact Documents.
- B. By signing this Agreement, the undersigned Contractor certifies as follows: Under Section 231.006, Texas Family Code, the Contractor certifies that the individual or business *entity* named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.
- C. No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be, construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- D.
 - .1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by Owner or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. If Owner receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of Owner, Owner shall send, not later than the third business day after the date Owner receives the written request, a written request to the Contractor that Contractor provide that information to Owner.
 - .2 The Contractor must:
 - 1. Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
 - 2. Promptly, within four business days, provide to Webb County any requested contracting information that is in the custody or possession of the Contractor upon request of Webb County; and,
 - 3. On completion of the Contract, either:
 - (a) Provide to Owner at no cost all contracting information related to the Contract

that is in the custody or possession of the Contractor; or

- (b) Preserve the contracting information on related to the Contract as provided by the records retention requirements applicable to Owner.

.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J of Chapter 552 of the Texas Government Code, unless Owner determines and documents that the entity has taken adequate steps to ensure future compliance.

- E. Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.
- F. The Agreement shall be governed by the laws of the State of Texas, and any litigation regarding this Contract shall be conducted in the state district courts of Webb County, Texas. Mandatory and exclusive venue shall be in Webb County, Texas, or, if no county is specified, then in the county in which the Owner's main administrative office is located.
- G. As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications. Further, Owner and Contractor acknowledge and agree that this Contract and all the terms and conditions contained herein have been fully reviewed and negotiated by the Owner and Contractor. Having acknowledged the foregoing, Owner and Contractor agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement ("contract") shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement ("Contract.")
- H. Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.
- I. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free

and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees , subcontractors, and all other persons carrying out the Contract.

- J. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.
- K. Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.
- L. Execution of this Contract by Contractor shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.
- M. No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- N. Unless expressly agreed to elsewhere in the Contract, no assignment by a party of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release the assignor from any duty or responsibility under the Contract.
- O. Owner and Contractor each bind itself, its successors, and assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- P. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as

close as possible to expressing the intention of the stricken provision. IN WITNESS
WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **date of last execution by Party to the Agreement** (which is the Effective Date of the Contract).

Owner:

Webb County, Texas

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Tano E. Tijerina

(typed or printed)

Title: Webb County Judge

(typed or printed)

Attest:

(individual's signature)

Title: Webb County Clerk

(typed or printed)

Address for giving notices:

Webb County Courthouse

1000 Houston Street

Laredo, Texas 78040

Designated Representative:

Name: Tano E. Tijerina

(typed or printed)

Title: Webb County Attorney

(typed or printed)

Address:

1000 Houston Street

Laredo, Texas 78040

Phone: (956) 523-4000

Email: Judge_tano@webbcountytexas.gov

If Webb County is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State: